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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 JERRY P. DIZON,) Case No. 12-4623-SC
9)
10 Plaintiff,) ORDER ADOPTING
11 v.) RECOMMENDATION, DISMISSING
12) COMPLAINT, AND REFERRING
13 WELLS FARGO, N.A.,) DISCIPLINARY MATTER TO
14) MAGISTRATE JUDGE
)
)
)

15 Now pending before the undersigned is Magistrate Judge
16 Nathanael Cousins's Recommendation to dismiss the Complaint of
17 Plaintiff Jerry P. Dizon ("Plaintiff"). ECF No. 13 ("Rec.").
18 Judge Cousins issued his Recommendation on November 26, 2012, and
19 thus the time for objections to the Recommendation lapsed on
20 December 10, 2012. Id. at 9; Fed. R. Civ. P. 72(b); Civ. L.R. 72-
21 3. Further, when Judge Cousins issued the Recommendation, he
22 expressed concern over the lack of diligence evinced by Plaintiff's
23 counsel, Mandip Purewal of the National Consumer Law Group, and
24 ordered Mr. Purewal to "provide a copy of this Order to [Plaintiff]
25 and e-file a declaration stating that he has complied with this
26 Order." Rec. at 8. The December 10 deadline has passed and the
27 Court has received neither an objection to the Recommendation nor
28 the required declaration of compliance.

1 The Court turns first to the Recommendation of dismissal.
2 Having reviewed Judge Cousins's Recommendation and found it to be
3 thorough, well-reasoned, and correct, the Court ADOPTS the
4 Recommendation as its Order. Defendant Wells Fargo, N.A.'s request
5 for judicial notice and its unopposed motion to dismiss are both
6 GRANTED. ECF Nos. 6, 7. Plaintiff's claims are DISMISSED as
7 follows:

- 8 • Claim 1 (breach of contract) is DISMISSED WITH LEAVE TO
9 AMEND.
- 10 • Claim 2 (fraud) is DISMISSED WITH LEAVE TO AMEND.
- 11 • Claim 3 (negligence) is DISMISSED WITH PREJUDICE.
- 12 • Claim 4 (intentional tort) is DISMISSED WITH PREJUDICE.
- 13 • Claim 5 (failure to modify loan under the California
14 Foreclosure Prevention Act) is DISMISSED WITH PREJUDICE.
- 15 • Claim 6 (declaratory and injunctive relief) is DISMISSED
16 WITH PREJUDICE.

17 Plaintiff has LEAVE to file an amended complaint, consistent
18 with this Order and the guidance contained in Judge Cousins's
19 Recommendation, within thirty (30) days of the signature date of
20 this Order. Failure to do so will result in final dismissal of
21 this case.

22 Turning to the lack of diligence displayed by Mr. Purewal, the
23 undersigned shares Judge Cousins's concerns. The Court recently
24 dismissed another mortgage foreclosure case brought, but neglected,
25 by Mr. Purewal. See Barrientos v. CitiMortgage, Inc., 12-4653-SC,
26 2012 WL 5914514 (N.D. Cal. Nov. 26, 2012). The Court REFERS to
27 Judge Cousins the issue of whether to sanction or otherwise
28 discipline Mr. Purewal for noncompliance with the Order requiring

1 Mr. Purewal to provide a copy of the Recommendation to his client
2 and to e-file a declaration of compliance on or before December 10,
3 2012. 28 U.S.C. § 636(b); Civ. L.R. 72-1; see also Civ. L.R. 11-
4 6(a).

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6 IT IS SO ORDERED.

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8 Dated: December 11, 2012


UNITED STATES DISTRICT JUDGE